IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.694 OF 2007

Sanjay G. Sawane ..Applicant
V/s
Union of India & others ..Respondent.

Mr. Sujay Kantawala i/b Mr. Yogesh Rohira, Advocate for the applicant.

Mrs. P.H. Kantharia, APP for respodnent Nos.1 and 2
Mr. Y. S. Shinde, A.P.P for the State.

CORAM : J.H. BHATIA, J.

DATE : 6TH MARCH, 2007.

P.C.

. Heard Mr. Kantwala, learned Counsel for the applicant and Mrs. Kantharia, learned APP for respondent Nos. 1 and 2. The present applicant was arrested on 26/2/2007 by Special Instigation and Intelligence Branch (imports), Mumbai in connection with smuggling of bonded stores meant for the vessels of Indian Coast Guard and the Indian Navy to the local market for a profit and it was alleged that he had knowingly indulged in supplying of bonded stores in the local market causing a duty evasion running into lakhs of rupees. In the remand application dated 27th

February, 2007 submitted before the Additional Chief Metropolitan Magistrate, Mumbai, which is clearly mentioned that the applicant was arrested for the offence punishable under Section 135 of the Customs Act. The applicant was remanded to the Judicial Custody. The applicant did not make any application before the Chief Additional Metropolitan Magistrate for bail. He has directly made this application before this Court.It may be made clear that according to the respondents Section 123 Customs Act is not applicable to the facts of the present case and the offence is punishable under Section 135 (1)(ii) Customs Act, which is held to be bailable by this Court in number of cases. In view of this, the applicant is entitled to be released on bail but this practice of making application for bail in bailable offence directly before the High Court without making such an application before the Competent Magistrate cannot be approved.

2. At this stage, Mr. Kantawala has brought to my notice that in Application No.32/BA/2007 filed by one Eknath Tulsiram Nerkar, the order passed by this Court holding that the offence under Section 135(1)(ii) of Customs Act is bailable was brought to the notice of

Addl. C.M.M. 3rd Court Esplanade Court (Mrs. R.V. Sawant- Wagule) but she refused to act on the same in view of the fact that in another matter, the learned Single Judge (Coram: B.H. Marlapalle, J.) had observed that the "investigation will have to be allowed to be completed and it is only only then the applicant can make out the case of either the bailable or non-bailable offence". In fact, that was the case where the prosecution wanted to invoke section 123 of Customs Act which makes the offence punishable under Section 135(1)(i) which is non bailable. It may be noted that in **Subhash Choudhari V. Deepak Jyala 2005 (179) ELT 532 (Bom) this Court (Coram: A.M. Khanwilkar, J.)** had considered the legal position minutely and had held that the offence under section 135(1)(ii) of Customs Act is bailable. That authority was followed by another learned Single Judge **(Coram: S.C. Dharmadhikari, J.) in Kuresh Taherbhai Rajkotwala V. Union of India and Ors. in Criminal Application No. 4264 of 2005** and again in **Pramod K. Shah** V. **Commissioner of Custom in application NO. 4230 of 2006.** After that I had also taken the same view in Criminal Application **No.272/2007 in Sangit Krishna Kumar Agarwal V. Union of India and Ors**. and number of other cases. Thus, as far as the

Bombay High Court is concerned, it is now settled position that the offence punishable under Section 135(1)(ii) is bailable and therefore in view of the provisions of Section 50(2) r/w section 436 of Code of Criminal Procedure Code the accused is entitled to be released on bail and no Magistrate can refuse to grant bail in such cases.

3. With the aforesaid observations the application stands disposed off with liberty to the applicant to move before Additional Chief Metropolitan Magistrate for grant of bail.

(J.H. BHATIA, J.)